



City of Hampton, VA Meeting Minutes City Council

22 Lincoln Street
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www.hampton.gov

Ross A. Kearney, II
Will Moffett
Angela Lee Leary

Christopher G. Stuart
Donnie R. Tuck
George E. Wallace
Molly Joseph Ward, Mayor

Staff:
Mary Bunting, City Manager
Cynthia Hudson, City Attorney
Katherine K. Glass, CMC, Clerk of Council

Wednesday, June 8, 2011

12:58 PM

Council Chambers, 8th Floor, City Hall

CALL TO ORDER/ROLL CALL

MOLLY JOSEPH WARD PRESIDED

PRESENT: Ross A. Kearney, II, Angela Lee Leary, Will Moffett, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

The Mayor welcomed everyone to the afternoon Council meeting and commented the first item on the agenda is an update on the 2010 Census results for the City of Hampton.

AGENDA

1. 11-0192 Update of the 2010 Census results for Hampton.

The City Manager stated we wanted to take a few moments today to review some of the census information because there have been many references made to the changes in the 2010 census numbers as compared to 2000. People are drawing conclusions that Hampton is dramatically losing population when in fact there were some over-counts in the 2000 census and we think some undercounts in the 2010 census that when you look at these issues really do not account for a dramatic loss of population. We thought it would be very helpful for Councilmembers and community members to understand the data a little bit better. We provided this information to Council in a Friday memo several weeks ago, but we thought having it before the public in a televised session and giving you all the chance to ask any questions you might have would be very clarifying and helpful. So with that, we have a brief presentation for you and certainly will be prepared to answer any questions you might have. She introduced Ms. Jackie Stephan, a Planning Analyst in the Planning Division of the Community Development Department.

Ms. Stephan greeted the Mayor and members of Council. She noted the Planning Division of the Community Development Department has always been the keeper of the census data and the census products as they are released. Ms. Stephan noted that she has been involved in the census for over fifteen years. For the 2010 census she was actually the liaison to the Census Bureau. Today she wanted to cover three things:

Population Housing Units and the Racial Composition, talk about what's coming up next, and then the current situation that we think we have before us now. According to the Census Bureau, our count on April 1st of 2010 was 137,436 residents. Looking at that and comparing it to the prior count of 2000 and also to the region, you can see that according to census counts, we took a 6.1% decrease in our population. The Hampton Roads Region went up about 7.8%. We broke this data down and looked at it in smaller geographical areas. Each of the outlines illustrated represents a census tract or the largest geographical area within a city or a county for which the Census Bureau will collect data. This map is on a 3% scale. Anything in green had a larger than 3% increase in their population for that particular tract between 2000 and 2010. The white areas were plus or minus 3%, so they could have gone down slightly or up slightly and then the tan areas took a larger than 3% reduction and again, that is in that particular tract for the last decade. We also took the same sort of analysis for the housing units. According to the census count, we have slightly over 59,500 housing units. Again, comparing that to the region and the past decade, we saw an increase in our housing units just slightly above the regional average with 3.9% compared to 3.1%. We broke that down again and this time this map is based on a 5% change. So again, anything in green saw more than a 5% increase in the housing units, anything white was within the plus or minus 5%, and anything in the tan took a larger than 5% decrease. What you may have noticed when you looked at this map and at the prior City map by tract we saw a large population and housing unit change in the Langley Air Force Base tract and also in the tract that contains Hampton University and the VA hospital. The third point she wanted to cover today is our racial mix. As you can see, Hampton's minority population has increased. That simply mirrors both the region and the State and the nation. Since this presentation was produced, some additional information has been released, so most of the information on this slide on a City level has been released. We can come back again at another date if Council would like more information on that, but we can get more information now on occupancy and vacancy and tenure and age breakdown from within the City.

Ms. Stephan continued indicating the two tracts that are really of question. The upper part of this screen is the tract that contains Langley Air Force Base and NASA proper. The lower part of the screen, that tract contains the VA Hospital, the Hampton University (HU) property, and also the Hampton Harbor Apartments. We start with the tract that contains Langley Air Force Base. The tract contains Langley Air Force Base and NASA proper and stated there are no housing units or residential population on NASA proper, so everything that's noted on the slide is within the Langley Air Force Base confines. It also does not include any information about Bethel Manor, Langley's housing complex. It's off base in York County and is not reflected in any of our Hampton numbers.

Ms. Stephan stated before we go forward to 2010, she wanted to walk through a little bit of what happened in 2000. In 2000, when you compare it to the 1990 count, you can see there was a very dramatic increase. We dug into that a little bit further and what we found out was that there were over 8,000 people on Langley Air Force Base in a type of group quarters called military disciplinary barracks or a military jail. Talking to the Langley officials, they confirmed at the time and they have confirmed still, they do not have any jail facilities on the base. We went back to the Census Bureau and asked them what they thought about it. They said yes, they recognized it as an anomaly in their count but they didn't have sufficient information to correct it at the time, so they were not going to take any action going forward. When we analyzed the data, that 8,000 person over- count was confined to the group quarters therefore it didn't affect our

school populations and it didn't affect our planning efforts. We felt the burden was on the Census Bureau to prove it, so nothing was changed. She referred to the 146,000 number at the bottom bullet commenting this was what the Census reported for 2000. For planning purposes, we've been using a population of about 138,000. We feel that more accurately represents what our true population was in 2000.

Ms. Bunting stated she wanted to make it crystal clear that in 2000 we identified an over-count of about 8,000 people because of the situation you just described at Langley, which Langley confirmed, but the US census did not correct the count?

Ms. Stephan agreed.

Ms. Bunting commented that the Census Bureau kept the number 8,000 higher than we identified it to be or this 146,000 number. As we move forward and look at 2010, we knew before the data came out that it was unlikely, in a City that was fully developed or nearly fully developed as Hampton is, that we could have gained 8,000 individuals we never had in the first place. So we knew the numbers from 2000 – 2010 would go down just by the mere correction of this anomaly as described by the census.

Ms. Stephan concurred and stated going forward now to April of 2010, the data was released a couple of months ago and they came in at the Langley count. For the base and this is again the residential population living on the base to include those individuals living in single family homes and in the dorms is 1,343. So yes, they corrected the 8,000 person over-count but we believe they over-corrected it. We've worked with the Langley staff and through their housing folks and together we've come up with what we feel is the accurate population of Langley Air Force Base residential population which should be somewhere in the range of 4,500 people.

The City Manager stated we will forward that information to the US Census Department again as a concern that we have with the data.

Councilman Tuck commented when he initially moved out here, his address was 1645B 7th Street, Langley Air Force Base, Virginia. So Langley has its own Zip Code and is recognized not necessarily as a city, but however you want to classify that. Why are residents of Langley Air Force Base proper being counted in the Hamptons census at all?

Ms. Stephan responded that Langley Air Force Base and Fort Monroe are within the confines of the Hampton City limits. That's the best answer she can give. She offered to look into it in more detail.

Mayor Ward noted that every military base's population throughout the country contributes to the jurisdiction in which they actually reside.

Councilman Tuck asked what is considered to be the count from Fort Monroe to Hampton either in 1990, 2000, or 2010 Census?

Ms. Stephan stated she did not have that data here as she has not completely evaluated the Fort Monroe data. She commented she can say that in 1990 Fort Monroe population reported by the Census Bureau was about 1,400 people. In 2000 it was

1,200, so it went down slightly. In 2010 the Census Bureau counted 696 people. So it's been going down.

Mayor Ward referred to the Langley data previously referred to relative to the over-count and asked Ms. Stephan what she believed the population at Langley was in 2000. Ms. Stephan stated her belief that the count was somewhere between the 3,500 and 4,500 as they had done some building during that decade.

Mayor Ward commented therefore, the over-count really wouldn't be 8,000.

Ms. Stephan explained that the number of people in a military disciplinary barracks was said to be 8,112. So what they have done is subtracted that from the 9,000, did some finagling of their own, and that's how they came up with the 1,300 number. She asked if that answered the Mayor's question.

Mayor Ward replied that she was still confused. If the count was over 8,000 in 2000 but now we think there are 4,500 people she doesn't believe the Langley population has grown from 1,500 to 4,500 since 2000 so there had to be a certain number of people here in 2000. She stressed she does not want to overstate the over-count.

Ms. Stephan stated she can't answer the question right this second of how many actual residents we felt were on Langley in 2000. In her opinion, had they correctly counted Langley in the 2000 census and then added the 8,000, maybe that 9,000 number would have been even higher.

Mayor Ward noted that it seems that the way it is being presented, there doesn't seem room for an 8,000 over-count in 2000.

Ms. Stephan continued her presentation by addressing the lower tract, noting that this tract includes all of the VA hospital, the Hampton University proper, and the Hampton Harbor Apartments. This difference isn't as dramatic. In 1990 to 2000 there was less than a 2,000 person increase, but in 2010 they're showing about a 1,000 person decrease. So again, we have worked with the staff at Hampton University and staff at the VA Hospital and we used our Geographic Information System (GIS) to get address points for the apartments and we have come up with what we think the estimate should be, which is about 3,600 people in that tract as opposed to the 2,700 total that they have given here. She stated they questioned what could be done about that and there is a program we can go forward with. It's called Account Question Resolution Challenge. We would do a detailed analysis and work out the counts and give our supporting documentation, which we do have, for why we think these groups are over-counted. The information, like all the other census information that has to be signed, has to come through the Mayor as the City's highest elected official. If the Census Bureau agrees with what we are proposing our account should be, they'll update our official number and we can use that number for the rest of the decade for our total population; however, they will not update any of the data products they have already produced. As in the age breakdown and the number of households and things like that; that will all stay as it is online. These challenges are also evaluated in the order in which they are received in the Census Bureau. We will get our information submitted before the end of the summer if Council would instruct us to do so and then we will hopefully get an update from them letting us know the timeframe in which it would be evaluated. The last slide she wanted to show is the differences between what we think has happened - the bars on the left

hand side of the screen show the reported census counts for the last three decades. It shows from 146,000 that included the over- count we feel on the Langley Air Force Base property, to the 137,000 which we feel is an undercount this time. When you look at the right end of the Planning Division estimates, we actually feel that we've seen very slight increases in each of the three decades as opposed to an up and then a down change. That is something we feel is important to let you all know. She asked if Council had any questions.

Councilwoman Leary commented when we start questioning the numbers – what do we anticipate the reaction of the Federal government to be if they find out that this number has been off for three decades; and isn't funding based on population? Don't they fund the number of children that are in the school system, that type of thing? If we are off, how are we going to remedy that? She emphasized that if it is, she would like to know what those issues are. She doesn't expect Ms. Stephan to know right now but believes someone needs to inquire.

The City Manager stated as noted, ten years ago we notified the Census Bureau that we felt there was an over-count and they opted not to correct it. Therefore, she does not believe there is any liability or potential for owing monies. How it would've shaken out with the actual Langley population we will never know because they opted not to go down that path, but we did bring it to their official attention.

Vice Mayor Wallace asked if this information can be re-publicized as he is getting tired of hearing all this gloom about, "We're losing people," when the fact concludes that is not the case. We are tracking an extremely good number of housing units, which means we are making greater progress in that direction and we are basically stable and tracking pretty much what's happening in some of the other communities in the Hampton Roads area.

Mayor Ward stated she believes we certainly should look at updating the information with the Census Bureau and we can discuss what the consequences may or may not be, but believes we will certainly try to prepare it and make sure our facts are straight.

PRESENTED by Jackie Stephan, Planning Analyst.

2. 11-0200 Briefing: Council Review of Cell Tower Location Applications Under Federal Law

Ms. Bunting stated what they had intended to do on this item was to very briefly provide an understanding of the Federal law that all localities are subject to when it comes to cell tower decisions. As each of you know, the applicant in the case to be addressed this evening has asked for the application to be deferred. Council will need to discuss later how you want to handle that deferral request, whether you want to honor that, whether you want to defer to a date certain, or whether you don't want to honor it. However, we did feel it was important to go ahead and give you some understanding about what the Federal law requires localities to do. This is the first cell tower decision we've had in some time and certainly the first one for the newer members of Council. She introduced Ms. Vanessa Valdejuli to provide an overview.

Ms. Valdejuli greeted the Mayor, members of Council and the City Manager and commented she wanted to provide Council with a brief background on the

Telecommunications Act of 1996. The purpose of those amendments – Congress wanted to stimulate a new competition in all communications markets which included local and long distance wire and wireless telephone, cable TV, data communications, internet, and paging. Congress in 1996 recognized that the promotion of this competition was going to require thousands of new towers and support facilities. They also knew, if you look at the Congressional Record, that it could adversely affect the character, the aesthetics, property values, historic significance, and environmental quality of communities across the United States. So they tried to strike a balance between encouraging the wireless carriers to enter the telecommunications field and yet they did not pre-empt State and local governments from continuing to play their traditional roles as the protectors of the community through zoning and other land use measures. So to reconcile those goals, they provided specific language in the Act which gave the State and local governments a general authority but with certain expressed limitations.

Ms. Valdejuli continued that one of the important things that we need to remember is at this point, Congress has actually allowed the interpretation of these limitations to lay with the courts, not with the Federal Communications Commission (FCC). Since 1996 onwards, the FCC really has wanted to take the role of pre-empting State and local government authority, land use authority, and basically take over that field. They haven't been successful yet. One of the limitations that you need to know is that a local government cannot unreasonably discriminate among providers of functionally equivalent services. Their decisions cannot prohibit or have the effect of prohibiting the provision of personal wireless services. State and local government have to act on applications in a timely fashion, and that has been addressed by the FCC. A decision by a State or local government to deny a request, to replace or construct or modify the cell tower facilities has to be in writing and it has to be supported by substantial evidence contained in a written record. No State or local government may regulate the placement or construction and modification of these personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilitates comply with the Commission's regulations concerning such emissions. So the bottom line of all of these limitations is while the Federal law expressly doesn't fully pre-empt the local land use authority regarding the siting of the cell towers, it does impose some limitations. The first one states a locality cannot deny an application on the basis of health concerns resulting from radio frequencies. Cases throughout the United States have held that given the clear prohibition of the language in Section 704, the State and local government cannot rely on the concerns about radio frequency emissions to support the denial of an application for the siting of a cell tower. It can include testimony of those concerns in its record, and it won't be fatal if you have other legitimate and sufficient grounds for denying that cell tower. Therefore, on health concerns alone, the Act says you cannot deny it. That is not to say that the locality cannot require the cell tower applicant to demonstrate that it has complied with the radio frequency emission standards that have been promulgated by the FCC. So that's a legitimate request, but you cannot deny it based on health concerns.

Ms. Valdejuli noted that the second limitation is that you can't unreasonably discriminate among the providers of functionally equivalent services. Under the current case law in Virginia, Hampton actually has substantial latitude in drawing reasonable distinctions among the providers of functionally equivalent services. In other words, you don't compare HD TV systems with mobile or wireless systems. Localities can use flexibility to their advantage by establishing what we call tiers of requirements or placement tiers

that have become increasingly rigorous as the impacts of the proposed tower and the sensitivity of the area increases, and Hampton has done that. If you have any specific questions on the hierarchy of the placement of towers, we have Mr. Terry O'Neill and Mr. Steve Shapiro who can directly speak to that. For example, you can encourage construction in an industrial area as compared to residential areas by making it relatively easy for a potential provider to construct in an industrial area and relatively difficult in a residential area. The tiered approach can also be used to encourage co-location of providers, which we do here in Hampton already, and the use of stealth/ disguised cell towers. Cell towers that look like pine trees, for instance, or other technologies and desirable goals. So you have flexibility in that area. State and local governments cannot expressly or effectively prohibit services, and it is clear to everyone that an outright ban on the siting of cell towers violates the provisions of the Act and sometimes an individual decision may also amount to a violation of the Act if it effectively prohibits personal wireless services. The courts have been very reluctant to find that one decision is going to amount to an effective ban and they really have imposed on the providers a heavy burden of proving that further efforts to find a suitable site would be futile. So the question is what is a suitable alternative site? The industry advocates have tried to argue, unsuccessfully before the courts, that the Act guarantees providers the right to build any and all towers that providers believe are necessary to completely affect a wide range of services, in other words, to fill in all of the gaps. The courts have also said that the test of a suitable alternative isn't whether the provider will be able to limit its cost to near industry averages but just whether the alternative is feasible. Here's where all the controversy is, because the courts are the ones that are doing all the interpreting and they are trying to look at the decisions that have been made by these local governments. Ms. Valdejuli stated it is controversial but expressed her opinion that the courts have recognized that the goal of the Act is to encourage competition but it cannot overshadow the other important concerns to decision makers, and that is preserving your autonomy as the deciders of zoning matters and land use matters. So in determining whether one individual denial has the effect of prohibiting the wireless services, the courts have focused on whether a denial would result in a significant gap in wireless service. One thing that you should know is that the Act does not say that you have to have 100% coverage everywhere in your city. In fact, Federal regulations expressly acknowledge that there are going to be dead spots in service. The Courts outside of the Fourth Circuit (our court), generally uphold denials of permission to construct facilities unless the provider meets his burden of proving that its proposed facilities are the least intrusive means necessary to fill the gap. The Fourth Circuit favors a less structured case by case approach and accordingly, a locality could deny an application on the basis that cell service is already provided by another carrier and of course, a case in point is the case from Virginia Beach, AT&T versus the City of Virginia Beach. Therefore, she expressed her belief that Hampton can rely on the guidance it's been given here.

Ms. Valdejuli continued. The FCC, as recently as November 19, 2009, issued a declaratory ruling trying to take over the role of interpreting the Act. As she has said, interpretation has been left to the courts. In this declaratory ruling, the FCC has out and out rejected the approach of our Circuit here in Virginia and stated that the denial by a State or the local government of an application for a cell tower siting just because one or more carriers or server give them a geographic market, constitutes an unlawful regulation and is prohibited by the Act. Thus far, the Fourth Circuit Courts have not acknowledged that but they recently submitted an Amicus Curiae brief in the Fourth Circuit case of T-Mobil in Northern Virginia and, of course, the local governments are fighting that by submitting their own Amicus Curiae brief. We don't know what the result

is going to be, but for right now, Hampton, as other localities in Virginia, has a lot of flexibility with respect to denying cell tower applications because other providers are already carrying that.

Councilman Tuck referred to paragraphs on page three of the presentation and stated the point you make is that the Act does not require that you have 100% coverage. In the following paragraph we talk about the least intrusive means to fill a gap and asked if those are dissimilar paragraphs?

Ms. Valdejuli indicated that the referenced paragraphs talk about the Courts outside the Fourth Circuit which would be other than Virginia.

Councilman Tuck stated he is trying to understand where the Act says there doesn't have to be 100% coverage. In the next paragraph are you saying what Courts outside of the Fourth District have said regarding that 100% coverage or just that these Courts have ruled that we're talking about the least intrusive coverage?

Ms. Valdejuli responded that it means that the other Courts have tried to interpret the limitation. So they have upheld denials of applications where the provider has not been able to prove to the local government that where they're sitting their cell tower is the least intrusive means, but the Fourth Circuit really has not taken that approach. They are still relying on their Virginia Beach case where in that one they had over 800 people in opposition and many of their concerns were a decrease in property values, which is something that you take into consideration. There is case law determining whether lay testimony alone is going to suffice, but in the case of Virginia Beach the Fourth Circuit said, "Yes. The opposition from these 800 people saying, 'My property values are going to decrease,'" was enough to uphold the denial of that application. However, you can't deny it on aesthetics alone.

Councilman Tuck asked if you have three or four towers, five, six, seven, eight towers within a mile of an area, is that applicable to the paragraph on the bottom of page three which says the Act does not require 100% coverage or does that speak to something at the top of page four where it talks about upholding the denials to construct facilities unless the provider meets its burden of proving that the proposed facilities are the least intrusive means necessary?

Ms. Valdejuli confirmed that it refers to the fact that the Act does not require 100% coverage; however, it also speaks to the fact that in the Fourth Circuit they have taken a case by case approach. So you look at what you have, present it at the time that you're hearing the application and you take into consideration the opposition, whether or not there are significant gaps or not, whether there's no service as opposed to there's some service. In Virginia Beach there was only analogue service. There was no digital service and there were two cell towers that were going to be placed in the steeple of the Lynnhaven Methodist Church in the Little Neck area. There was opposition from the Planning Commission all the way through and the Fourth Circuit upheld the testimony of the citizens and their concerns for decreased property values.

Mayor Ward asked for clarification that we've received a request for a deferral from AT&T for use application of a 120 ft monopole to be located at 95 Tide Mill Lane.

Ms. Valdejuli stated that was correct.

Mayor Ward asked her fellow members of Council whether or not they would be inclined to grant a deferral? She is aware that there are many citizens who want to come out for this tonight and if a majority of Council would consider deferring it, then that would save a lot of people a trip downtown.

In response to Councilman Kearney, the City Attorney stated under the City Zoning Ordinance, if you vote to deny an application, the applicant can't bring that same application back for another year. However, with respect to the Telecommunications Act provision, there is an additional route for them to take upon a local government's denial of an application. She stated it is her belief that the applicant has 30 – 45 days to challenge that denial in Federal Court applying these limitations on local government authority or challenging it under the Telecommunications Act as to whether or not your decision was within the limits of Federal law. You could absolutely choose not to defer it tonight, to hear it, and to deny it but they do have that bite at the apple within less than a year in Federal Court. However, they couldn't bring it back to Council under the City's Zoning Ordinance for a year.

Councilman Kearney stated being frightful of the Federal authorities starting to get involved in the court system, if Council were to vote to defer, can we vote to defer this until June of 2012?

The City Attorney indicated that was correct.

Mayor Ward commented it was her understanding that they want to try to work this out with the neighborhood, possibly find another location or work out the appearance, or work out the terms so that it might get approved. To her the point of deferring it would be to give all the parties the chance to work it out and then let us hear it because the application that's before us will not be what the application looks like when it comes back to us. Therefore, she is unsure if a year is really fair to everyone including the neighborhood. They might want to get it resolved faster than that.

Councilman Tuck asked the basis for the request for deferral.

Ms. Valldejuli stated the applicant indicated that they are requesting a deferral in order to work out lease terms with the property owner where the tower will be located. The applicant also indicated that during the Planning Commission meeting, that they are willing to work with the neighborhood and the community to bring forth a better application for it to appease the neighborhood also, but that wasn't specifically stated during the deferral request.

Councilman Stuart stated he intends to vote for a deferral simply because an applicant – not this particular applicant – but an applicant has asked for a deferral to work with a potential lease individual to communicate with the community. That would seem to be just a matter of fairness and respect, something that he can certainly understand. They came to us in good faith. It's been a written documentation that they were seeking a deferral.

Vice Mayor Wallace stated he would also support a deferral. Presumably there would be a meeting with the larger community to work out whatever their differences are. That working with a larger community is not to negotiate a deal in terms of what they're willing

to pay the current site, because if that's the case, he is going to vote to deny, but if they're going to defer to work out a deal with the total community, he will vote for a deferral. He asked if that was clear to everyone and made sense.

The Mayor noted her belief that that is a fair point.

Councilwoman Leary commented she wanted to be as kind and gracious as she possibly can about this and would like to word her question without offending anyone and asked if anyone on City Council, anyone outside of staff had this information prior to 1:37 p.m. today? City Attorney Hudson asked for clarification on what information she was referring to.

In response, Councilwoman Leary stated when Ms. Hudson provided Council with the information about the use application, she looked at her agenda review and wondered why she didn't have the information earlier, why didn't she have access to this information when the neighborhood came to her and asked for a site visit. She noted it really discourages her because it puts her in an awkward position with the residents in that area because then they get the perception that we don't have our act together. They have been looking at this situation since 2007 when T-Mobile went out and took a look at this site adjacent, which is about 1,600 feet away from where they want to put this cell tower now, but then AT&T managed to get hold of this situation. Now, they are elbowing the community and the [Edwards] property owner. They are using their muscle a little bit to move everybody else out of the way so they can put it somewhere that she is unsure whether it is legal for them to put it. She commented that she doesn't know if this is going to have any type of security involvement to hamper the mission of Langley Air Force Base? Nobody has answered her questions as she really hasn't had an opportunity to ask them. She reiterated that she is really discouraged when she isn't given information that can help her in the community far in advance of a meeting. She is perplexed that she didn't have this earlier.

Discussion followed between the Vice Mayor and Councilwoman Leary as to whether he had been recognized by the Chair to speak as she had not finished her comments.

Mayor Ward stated that in all fairness, she agreed with Vice Mayor Wallace in that she thought Councilwoman Leary had finished her comments. She also commented that perhaps there is a need to be more formal in our meetings.

The Mayor asked that Councilwoman Leary complete her comments.

Councilwoman Leary asked if this (providing information just prior to a meeting) is going to be a standard practice because she has said something about receiving information right as Council is poised to make a decision and not having that information prior to making that decision. She stated she needs more time than 24 hours because you are meeting with the community/you are called to have meetings and things of that nature and she would like some type of assurance that she is going to receive this information in a timely manner.

Vice Mayor Wallace stressed that staff is being accused of not supplying information in a timely manner which is unfair as the information was supplied to Council on Friday with the agenda package; we had about 60 or 65 pages on this item alone. Therefore, the details needed to provide responses to questions were included there. What has

happened today is that the information is provided to us in a more concise/precise format.

Councilwoman Leary stated if Council is going to be more formal in its deliberations, which she does agree with, then Council needs to understand that you do not admonish another member of Council. You make your comments to the Chair. Comments are supposed to be made to the Chair and not to a single individual – because we all got here the same way, by the goodness of these people. She stated that happened earlier and she didn't say anything but she is saying now that it needs to stop.

Mayor Ward stated to Councilwoman Leary that she does her best. Sometimes it is hard to tell if she is raising her pen or if she wants to speak or doesn't want to speak and people have different ways of signaling. That's one of the reasons why she sits where she does instead of in the middle, so she can see everybody, and it's harder than it looks to make sure that everybody's heard and gets to say what they want.

In response to a comment by Councilwoman Leary, the Mayor stated until you walk a mile in her moccasins she would ask that she not be judged.

The Mayor stated that she has talked to at least one member of the community who is very, very aware of Section 704 and understood exactly what the regulations meant and understood exactly what they could and could not bring up. If you Google "how can you oppose a cell tower," which she did before the meeting, it comes up in two seconds. So if you're going to go out in a community and meet with a group and talk about how you are going to oppose a cell tower you can either get with the City Attorney's office and sit down and say, "Hey, I'm meeting with this community group and I need to know the basis on which we can or cannot oppose a cell tower?" so you can be informed before you go out and represent something to the community, or you can research it, or you can wait until you get your agenda packets. She stated she doesn't necessarily think it is fair to criticize the City Attorney's office for not getting us the concise memo until today. Ms. Valdejuli is briefing us before tonight so that we understand what the parameters are if we are going to hear this agenda item this evening and she knows they are willing to work with us any time if we have questions about what the law is. She noted she does that all the time prior to going out and representing something to someone in the community.

Vice Mayor Wallace stressed that his comments were not necessarily to any particular individual.

Councilwoman Leary made an observation that in her training, she always learned that there were two kinds of criticism. One is destructive. One is constructive. She had hoped that her comments were constructive and letting you know what she needs. That if you're going to present something, if it's on the agenda review, if the Clerk's got to put it on the agenda to get it in front of us, then she needs as much information as possible without having to do independent research. She added that she would think too that she would Google cell towers when she goes home, but laws are different in each State. That's been brought out. She is talking about the Fourth Circuit and that type of thing. She commented that she doesn't want to go there right now, but she does want to recognize that there is a difference between constructive and destructive criticism and noted her hope that everyone knows that is what was intended.

Mayor Ward stated it is actually Federal law, so it applies to all of the States and the Fourth Circuit has just interpreted the Federal law and that is what you would rely on when you're making a determination of what the law would be and how it would be applied in Hampton, but the Federal regulations still apply and are uniform for the entire country.

Ms. Hudson stated she is not trying to prolong this discussion. With the Mayor's permission, she just wanted to mention that the subject of the application of the Federal Telecommunications Act to this decision was fully vetted and fully agreed on at the Planning Commission. So certainly we were not holding back on the information. As it related to this briefing today, staff had discussions about the point at which to bring this to Councils' consciousness at this level of the land use decision review and we specifically opted to do a briefing today closer to your decision so you would have plenty of time to hear the information and to ask questions before you decided tonight rather than to send a five page memo or something that would get lost in 700 pages of other agenda information. So that was a conscious decision. She indicated that possibly they neglected to think about Council's need to be more informed, but the nature of the limitations in the Telecommunications Act would not have addressed the issues that were dividing the community with respect to the sitting as related to the Elks Lodge versus the pool side, versus the Civic League. These simply have to do with relevant legislative considerations that you may or may not legally bring to bear under Federal law, but again, we will always consider what we think is the most effective way to educate you or to inform you and sometimes we don't make exactly the right call.

Councilwoman Leary asked the Mayor if they can we go ahead and call for the question? She stated we don't have a motion yet but she believes you have your four votes.

Mayor Ward responded that she believes Vice Mayor Wallace makes a really good point. She would want to hear the applicant personally say that he is going to work with the neighborhood, not that he's working on the lease agreement with the Elks Lodge but that there's a broader point to the deferral.

Councilwoman Leary agreed.

Mayor Ward stated we don't have that formally before us now. The representation is that they made that comment at the Planning Commission meeting, but that wasn't part of their formal deferral request. So understanding that now that we know they are asking for the deferral to further negotiate their lease with Elks Lodge, she would be disinclined personally to vote for the deferral until she heard them phrase the deferral request in the manner that Vice Mayor Wallace discussed it, because she wants to know that that's what they're after, not just renegotiating lease terms with Elks Lodge.

Mayor Ward asked if Council had additional comments relative to their desire to support or not support a deferral.

Councilman Tuck stated he would wait until the evening. Councilman Moffett stated he would like additional information, but could support a deferral if under the right circumstances, as identified. Councilwoman Leary agreed. Councilman Kearney also agreed with Councilman Moffett, but addressed a question to Mr. O'Neill. He stated when this issue first came up somewhere in 1995-1996, he (Mr. O'Neill) provided

Council with a report that indicated that the Hampton Roads region needed something like 1,600 towers to be built over the next ten to twenty years.

Mr. O'Neill agreed that while he doesn't remember the exact number needed, it was a staggering number.

Councilman Kearney stated it is important for the Council or the public not to think that we are wasting time because the decision you make today can reappear next week in another location. So what we do is very important and asked Mr. O'Neill if he would agree to that?

Mr. O'Neill agreed and stated it became a Federal Act to ensure that these kinds of facilities were provided almost like public infrastructure and the industry representatives will tell you there are more towers coming.

Councilman Kearney concurred that is exactly right. He stated he would also like to follow up with Ms. Hudson. He stated he may be at fault -- this morning he met with Ms. Hudson and asked her some questions concerning the cell tower for the record and he suggested to her that she needed to provide a concise memo that tells Council what they can and cannot do, and it appears in her handout today because we had gotten a similar memo from the former City Attorney. At one time we were talking about the same thing, so he is sure the laws have changed and been reinterpreted by Federal court decisions, but he takes full blame for requesting a concise memo be presented to Council because he believes it was important to have. He thanked the City Attorney very much for doing her job.

When called upon by the Mayor, the Vice Mayor agreed with the suggested approach to the possible deferral of the request.

Ms. Bunting stated staff would recommend that if Council does get the assurance that they are looking for, that when you defer the item it be deferred to a date certain. The neighborhood has indicated that would be preferable to them rather than an indefinite deferral which was requested by the applicant. So with Council's permission as we pursue this issue with the applicant to try to get the clarification that you outlined, we will also try to get clarification on a date certain that would be mutually agreeable to the neighborhood and to the applicant.

PRESENTED by Vanessa Valdejuli, Senior Deputy City Attorney.

3. 11-0186 Hurricane Awareness Presentation

Ms. Bunting stated everyone in our community knows that June 1st is the beginning of the hurricane season and as a hurricane prone community being on the East Coast and the Chesapeake Bay, we do believe it's very important to be ever-vigilant in our preparedness efforts. We actually have a full-time staff that works on emergency management year round. We hope our residents also pay attention to emergency management year round but certainly at the start of the hurricane season, it's always worthwhile to bring to the attention of Council and the community any recent changes or items of note. She commented she will also share that we will be doing some increased communications with our residents outside of this brief as this briefing today is intended to be a ten minute high level briefing, but we do have more information to share and

update our community on and we'll be using our traditional channels be they Channel 47, e-news, newspaper, print publications, and the like. So this is not intended to be the be-all and end-all of hurricane preparedness, but just the sort of updates that we think are pertinent for you to have. With that, she introduced the City's Deputy Emergency Coordinator Sara Ruch to make the presentation.

Ms. Ruch stated it is her pleasure to present the annual Emergency Management Hurricane Preparedness briefing. In order to respect the tight schedule today, she respectfully asked that all questions be held until the end of the presentation. The purpose of today's briefing is to provide continued education on hurricane preparedness, deliver updates on hurricane planning, and logistics efforts. As many of you know, hurricane season runs from the beginning of June until the end of November; however, looking at the chart up on the screen you can tell that the peak of the season is from mid-August until late October and this is also the time in which the City of Hampton is most prone to getting hurricanes; however that does not mean that we can't get hurricanes any other time during the season. She referred to the City of Hampton's storm surge map and noted there is a large portion of red and orange, which indicates those areas which would receive storm surge during a category 1 or category 2 storm. Another concerning point is that if you look at the category 4 storm/three through one, over three-fourths of the City of Hampton would be affected by storm surge. This is an issue when planning for where to put shelters in the City. However, she will be addressing shelter concerns later on in the presentation and what we have done to alleviate some of those concerns. Storm surge actually creates generally the greatest number of deaths in hurricanes. It is not necessarily from the tornadoes or the high winds spawned off of a hurricane. It is generally due to the storm surge and the fresh water flooding. It's important that all citizens do a hazard analysis of their area to know which streets flood the ingress and egress of their location in the City so they are not cut off during a storm because of flooding roads. She provided an example of what storm surge can do. The example shows Galveston, Texas before and after Hurricane Ike. If you look at the yellow arrows in the before and after pictures, you can tell the devastation that occurred to that area; and that kind of devastation could occur in Hampton after a category 4 based on the water levels that they depicted for these two pictures and what our storm surge map indicates.

Ms. Ruch continued with reoccurring themes found in emergency management. Individual responsibility – it's important for every citizen in Hampton to be prepared. Get a kit, make a plan, and stay informed. City staff has been working on evacuation, shelters, and coordinated response planning within the region. As previously mentioned, staying informed is especially important. We do have an agreement with Hampton University, their radio WHOV Channel 88.1, to run updates and hurricane preparedness information during an approaching storm fifteen minutes after the hour and fifteen minutes before the hour, so that is somewhere that residents can go to listen and get information. Other places to get information are from e-news, Facebook, Twitter, the City website, and we always suggest that residents purchase an all weather radio and they can get information directly from the National Weather Service. Evacuation - who should evacuate? Well, not everybody needs to evacuate. This is one of those points where you need to stay informed. If your area for the category of storm that's approaching is in that storm surge area, then you need to evacuate. Also, if you are in a mobile home or a dwelling that is vulnerable to wind, you also need to evacuate. If you have some special needs, especially those that are electrically dependent, you definitely want to consider evacuating. Even if you are not in one of the storm areas predicted

you should still consider that you might be living without electricity. So that's something to plan for. You don't need to evacuate all the way to the western side of the State in order to be safe. You could stay within the region with a friend or a family member up in James City County or the upper part of York or Williamsburg. Those are all safe generally. Emergency shelters that are provided in the City of Hampton would also be an option. This is a graph or a picture of the 64 lane reversal that's planned by the State. She will go further into the timeline of when the Governor would decide whether or not to reverse lanes later, but an important thing to note is that the State finally does have a bus contract to assist localities with transporting their transportation-dependent populations. We could ask for these buses and they would arrive 40 hours prior to the onset of tropical storm force winds and the last bus would leave twenty hours prior to the onset of tropical storm force winds. The goal is to get the buses out of the area before the onset of the lane reversal so they don't get stuck in traffic and then you have another issue there, a logistical issue.

Ms. Ruch continued with the State evacuation timeline. As you noticed, it starts out six days before the onset of tropical storm force winds. There are three points to note here that are rather important. At the 48 hour mark before tropical storm force winds, the Governor will make a decision on whether or not to do a lane reversal on 64 and the other important note is if he were to start the lane reversal, it would occur at 30 hours before the arrival of tropical storm force winds and it would also end at six hours before the onset of tropical storm force winds. Now, 64 is not necessarily the only evacuation route out of the Peninsula. We also have Highways 60 and 17 that people can use, but those are not reversed. This leads us to emergency shelters. Those are safer environments for those in a risk area. It is important that citizens realize that our shelters are more of a lifeboat than a cruise ship. As with most jurisdictions in the area, we do not have enough cots or mats or those sorts of things to provide to everybody that would possibly be seeking shelter and that is why it is important that everybody prepare an emergency preparedness kit and bring that with them to the shelter and their stay will be a little more comfortable.

Ms. Ruch stated these are some of the issues that we have been working on diligently throughout the year. Emergency Management staff is incorporating the use of the two new schools, Phenix and Andrews, into our sheltering plan. We have also worked out a Memorandum of Understanding (MOU) with James City County to use some of their school buildings as shelters if needed and we are currently working with Newport News on a similar MOU. Through the Urban Areas Security Initiative, we have been able to purchase special needs trailers and supplies and pet sheltering trailers and supplies. The special needs trailers will accommodate 50 patients and 50 caregivers along with 25 staff. The pet shelter and trailer comes with 200 kennels, however it's important that citizens realize that if you have your own kennel, that's the preferable option to bring to a shelter because we only have 200 and we can also use those for rescuing animals. Make sure that if you are bringing an animal to a shelter, that it is a pet friendly shelter.

Ms. Ruch continued with regional advances stating they are working on an ICS Peninsula Area Command. Emergency Management staff has been working on a regional catastrophic planning team. We have made great strides in the mass care and sheltering and the transportation and evacuation, identifying gaps and then figuring out ways to alleviate or mitigate some of those issues. The State has also done a lot with State-wide mutual aid. They have created a list so that if a jurisdiction is specifically looking for an item, they can send it up to the State. The State will send it out on their

behalf and then other jurisdictions that might be able to supply that item can respond directly to that jurisdiction and the jurisdiction can make the call on which offering jurisdiction they want to go with if they do want to go with one. State has also made great strides in expanding its contracts. We now have the ability to order everything from bulk baby diapers up to a base camp for an incident management team. So there's a wide variety and they've done a great job in expanding that. We recently participated in the City/County Hurricane exercise. It focused on intermediate recovery (three to fourteen days) and we looked at restoration of life line, economic and community recovery. We're still working on our Peninsula mitigation plan. We will be holding a citizen input meeting sometime before the end of June. So if everybody could just stay tuned as to when and where we will be holding that, we will get that information out shortly. We've been working on the Home Elevation Grant Project. We currently have four homes that have been submitted to Federal Emergency Management Agency (FEMA) through the Hazard Mitigation Grant Program and we are still waiting to hear back from FEMA on whether or not those homes will be accepted for the grant.

Ms. Ruch displayed a screen listing points of contact for her office

Councilman Kearney asked Ms. Ruch to provide Council with an abbreviated form of what is required for the application for raising your home as Council occasionally receives inquiries from citizens and it would be helpful to have that information. Ms. Ruch stated she would be pleased to do so.

Ms. Bunting commented we have this Federal and State program but as you know, with the budget, we're developing our own program. Those are still in process but we'll go ahead and send you what's available at the State and Federal government level now and then as we get the new rules done for our local program, we'll supplement that.

In response to Councilman Moffett, Ms. Ruch addressed volunteer management, stating they are currently working on or have an MOU in development with the volunteer center. As part of our ESF and then also part of one of the annexes, volunteer management and resource management in the City of Hampton is geared towards having the volunteer center run and manage a volunteer reception center to deal with a lot of the spontaneous volunteers that come in. We do have an absolutely fabulous organized volunteer effort in the City of Hampton through Citizen Corp, working with the Red Cross, and through the Virginia Peninsula Volunteer Center.

Councilman Moffett stated he is sure there has been some sort of simulation in the event of a Category 1/Category 2 hurricane. How many people in the area would reasonably evacuate using the methods that you have previously mentioned and what are the projections of people that might just determine that they either cannot get out or choose not to?

Ms. Ruch replied that they do have a projection for how many people they believe will be leaving based on the different categories of storms and then with that, they have a projection for how many people they believe will be staying. That one's broken down by the City. She commented they do have some information on how many people will be seeking shelter on the Peninsula that live on the Peninsula and how many people will be seeking shelter through the State sheltering system. While she does not have those numbers with her she will provide them to Council later.

PRESENTED by Sara Ruch, Emergency Management Planner.

4. 11-0201 Briefing on Flood Map Changes and Adoption.

Ms. Bunting stated this evening you also have some actions on your agenda that relate to the adoption of the Hampton Flood Insurance Rate Maps and miscellaneous ordinance requirements. We briefed Council on this several months ago. We went through a Federally-defined process and we're at the point of adoption this evening. She asked Ms. Hudson to give an overview of the legal requirements relating to this so that Council has the opportunity to understand, and if necessary, Mr. Steve Shapiro also has additional information.

Ms. Hudson stated, as you know for the last year or so, staff, in combination with the Planning Commission and ultimately the Council, have been putting in place the framework necessary for residents of the City to be able to participate in the National Flood Insurance program. This is the final step in that process. Council adopted the main ordinance and then last fall the adoption of the zoning, the flood zone districts, and the zoning ordinances. At that time however, we didn't have final information from FEMA. We had to wait out their appeal period and wait for them to make final changes to the map. They have now done that and let us know, as the background statement of your agenda indicates, that is done and that we now have to adopt the map and their Flood Insurance Study (FIS) to be effective no later than August 16, 2011. So the items necessary for you to effectuate that action are on your agenda this evening. She commented she simply wanted to emphasize by way of background and brief overview this afternoon that the legal underpinning of this is that Federal flood insurance, so necessary in a community like ours, is available only to those cities that agree to regulate development in the Federally-mapped areas, so it is certainly a matter of necessity. The failure to adopt the FEMA insurance rate map will result in our residents' suspension from the National Flood Insurance Program through the City's participation. There are various sanctions for our failure to do so, but obviously the most severe sanction is that we wouldn't be included in the program at all which would carry the consequences of no flood insurance being available, existing flood insurance not being renewed, no Federal loans or grants would be available for flood mitigation, no disaster assistance from the Federal government, and no Federal mortgage insurance would be provided. Those are pretty dire consequences obviously, so hence all the work that we have done to ensure that we have done what's necessary to be in compliance in order to participate in the program and to do so in a timely fashion. Mr. Shapiro can talk to you more specifically if you have any questions about communication with the community, about this process, what the appeal process was like, and what our outreach efforts were. She reiterated that from a legal perspective, to be the best stewards that we can be with respect to our residents' concerns in a flood prone area, we simply have to do this.

Mr. Shapiro stated he has ten slides that he will run through very quickly. If Council has any questions, he will be happy to answer them. Just to bring Council up to speed on how we got here, we received the new Flood Insurance Map and the study back in December of '09. We conducted outreach in July of 2010. It was part of our community rating system application which we're going to be talking about tonight as well and then Mayor Ward received notification from FEMA on February 16th of this year that the 90 day appeal period had lapsed. There were no appeals and therefore they gave what

was called the six month letter of final map determination where we have six months to adopt the study in the maps. If you recall when we did the presentations, we now have a floodway. We never had one before in Hampton. It's a regulatory floodway from New Market Creek. So that's part of the new study. Our GIS determined there were 45,012 properties that were affected; 1,700 were added to the regulatory flood hazard area; 2,600 were removed; and 212 are in the floodway mentioned. Obviously as Ms. Hudson said, flood insurance is available to the communities that have agreed to regulate development and failure to adopt the flood insurance rate map, which is called the FIRM, could result in probation or suspension from the program. The sanctions read by Ms. Hudson are pretty dire if we don't take action. We did do outreach, as mentioned, in July. We sent letters to all the folks that were involved. We had a dedicated web link. We had customized improvements to our website. We did newspaper and television, 311 Frequently Asked Questions (FAQs), there were presentations to both City Council and Planning Commission, and then we did three meetings throughout the community. Over 600 people attended those three meetings. We held them at Kecoughtan High School on July 19th, and at Aberdeen Elementary on July 22nd. Then there was a Saturday meeting at the Convention Center on the 24th of July. Since then, through Gail Hicks and our Public Works Department, there have been 250 individual consultations with folks who had particular questions after we did that outreach. So the conclusion is that we have to adopt flood plain management measures that will provide protection and ensure our continued participation in the Flood Insurance Program. It's mandatory that our ordinance meets or exceeds the minimum from the National Flood Insurance Program. So there are two separate actions on tonight's agenda. There is a resolution that has to be passed to adopt the new maps and the flood insurance study effective August 16th and then there are some text amendments to Article 5 in the Zoning Ordinance. One of them changes the date but there are also some comments. After we revised our ordinance, we sent it back to the State Department of Conservation and Recreation. They had a few more language changes they wanted us to make. They're not substantial; more housekeeping than anything else, so they're included also. Therefore, we're going to ask you to adopt the resolution and to pass those changes and then we will be compliant and we will forward that on to FEMA. He asked if Council had any questions.

Councilman Kearney stated he received a letter from FEMA no more than a month ago, if not less than that, that our rates had gone down because of action that had been taken by the City. Can you explain that please? It was a wonderful letter. He read it twice to make sure.

Mr. Shapiro stated he is thrilled to explain it and will explain it tonight as well. We applied to FEMA's community rating system. The way that works is there's a large application you fill out. You get points for various activities. If you don't do anything, the communities are a ten, which is what Hampton has been for all these years, we actually are now an eight. We jumped right over a nine to an eight, which is a 10% reduction and it went into effect May 1st for any renewed business or any new business. Our representative from FEMA from Philadelphia will be here tonight to present the Mayor with a plaque that Hampton is now an eight, which is a huge accomplishment. The total savings for the City of Hampton for the people who have flood insurance is over \$700,000 per year.

Councilman Kearney noted that we need to sing that song tonight because that was really great. He checked the envelope to make sure it did come to him.

Ms. Bunting reemphasized, that this is something that happened because the City government initiated and funded the rating study and took various actions with our ordinances and the like to qualify. So had Council not taken those actions, we would still be a ten today.

Councilman Kearney asked if the programs the City is doing now with the dredging and building of breakwaters, etc., will affect Hampton in the future with a possible lower rating?

Mr. Shapiro stated the application was huge and he would have to look at it to see. There might be some points available for some of that. So this is an ongoing process. We'll certainly be incorporating those things.

PRESENTED by Cynthia Hudson, City Attorney, and Steve Shapiro,
Deputy Director of Community Development.

5. 11-0202 Briefing: 2011 General Obligation Bond Issue

Ms. Bunting stated tonight we have the authorization for the fiscal 2011 bond issue. Originally we had contemplated doing this in the fall. We took more time because we wanted to ensure we were further along in the design of the courthouse and also working with the schools on the necessary timing for their school maintenance projects. She did not want to borrow the money any earlier than actually needed. She wanted to give Council assurance that the staff had reviewed every project and certainly there had been some concerns expressed about the need for and more specifically, the timing of the Circuit Courthouse. She felt it prudent, as a relatively new Manager, to get additional confirmation that indeed it was an urgent security need, which is the reason for the project in the first place. So rather than relying exclusively on the Circuit Court needs assessment, which is a legal process when we look to renovate or build a new courthouse, we got an independent security or threat assessment. The Hampton Police Division was asked to find a renowned public safety security expert to come in and do an independent audit. They would have nothing to gain in their findings either way as they would not be a beneficiary of a decision to build or not to build, to renovate or not to renovate. She continued that she thought it would be very helpful. We've shared that with Council in the Friday memo and as part of this package. However, for the benefit of the public Captain K. Ferguson is here with a representative of Stewart, Cooper, & Newell Architects.

Captain Ferguson introduced Mr. James Stewart with the Stewart, Cooper, & Newell Architect firm. As the City Manager mentioned, in May the firm was asked to perform an overview of the Circuit Court building and Mr. Stewart is here to provide us with that report.

Mr. Stewart greeted the Mayor and Council and stated there are a number of issues in that particular building to include different traffic problems. There are areas outside that lack security for the building's functions. There are ten points of ingress into that building; some have card access, some don't. Then the inside is rather chaotic.

Mr. Stewart continued that what they did was divide up the different levels for the Courthouse users. The yellow floor plan indicates public access. This is the first level.

He indicated the points of access on his diagram noting that some have card access, some are key only, then there is exit only, and some have no hardware at all on the doors. As shown on the diagram, the public can get through just about everything in the building. The Courthouse staff, of course, has access throughout the building as well; therefore the public and the staff all intermingle inside the building.

In response to the Mayor, Ms. Bunting stated the diagrams are in the report and are available online for the public.

Mr. Stewart pointed out that jury access is indicated in green on the diagram and the jury is throughout the building as well. He then referenced the records area which is a really crowded area with one entrance, but then they have access throughout the building as well. So you have a mixture of all the different people who use the building. His next diagram shows the overlap in the area indicating the bridge that comes across from the detention center and the detainees are also throughout the Courthouse along with the families, the public, people using the records area, and it provides the possibility for something to happen at some point in time. He commented his firm has designed courthouses and all types of public safety buildings over the years and they always try to separate the traffic to each one of those entities. It is very difficult to control this to protect the judges and the jury and the detainees and the families. You can have an altercation there between families, witnesses, almost all types of situations.

Mr. Stewart stated they also looked at cameras. There are only six cameras inside the building. The video system is a closed circuit TV but it's active. However, there's no way for the person who sits at the front entrance to monitor that all the time. There are no recording capabilities there. Adding more cameras and more card access and more security points won't solve the problem because the problem is all the interaction of the different parties that use this building. He stated it would be virtually impossible to secure the Courthouse and it would not be a bad thing to have a new building. He asked if Council had any questions.

Councilman Tuck stated with all due respect to Mr. Stewart, he believes the things he pointed out seemed to be within the purview of a sheriff. He went online and found a report from the National Center for State Courts and it talks about steps to best practices for court building security and it's dated February 2010. Some of the things you point out are in there as well as steps to get to best practices, but it still seemed to him that some of the things pointed out are things that the Sheriff should be concerned about and it seems unfortunate that the Sheriff has not come before this Council or even previous Councils as far as he knows to address those security issue because some of them indeed are addressable by different practices that the Sheriff can implement. For instance, we talk about the external access to buildings. The report he read talks about blocking access. You put bars on them so people can't get in and you can't get out. The lack of a private parking area by the judges. The judge notifies the Sheriff when he is arriving and gets personally escorted into the building, personally escorted out of the building. Moving about with detainees. If you are encountering the public, you have a Sheriff's deputy who escorts the prisoner or the detainee as well as having an additional officer who moves ahead and moves the public out of the way. He expressed appreciation for Mr. Stewart's report, but believes the issues that he raised should be addressed by the Sheriff, and he is not present.

Mayor Ward stated Sheriff B.J. Roberts took Councilmembers through the Courthouse and indicated point by point what the concerns were and which ones he could address and which ones he couldn't address. An additional problem included in the report is a lack of holding cells. There is one holding cell and it only holds two or three people and there may be individuals that shouldn't be in the holding cell together. There are a number of deputies that have to guard the detainees while they're in the courtroom and there's a lot more than just the fact that everyone is intermingled.

Mr. Stewart concurred with the Mayor and noted it will become quite a staff and operational issue to address all of the problems in the Courthouse.

Councilman Tuck stated he doesn't know if this is the timeframe we're going to discuss this. He was actually prepared for it this evening, so he would rather not go into some of the things that he found, but had a tour of the Courthouse and had seen the concerns but again...

Mr. Stewart reiterated that the situation within the building a difficult one to solve. If there had been access for the detainees coming across the bridge on the side where the arches are and a holding cell along that side and the courts have been placed properly early on, there could've been a way to divide all of that, but the way it's laid out, it would be virtually impossible to go back and renovate it. It would be very expensive to try to solve some of those issues. He referenced page eight of the report, that shows a layout of a typical court room and stated that is one he has done before with holding cells in between the courtrooms so prisoners aren't actually mixed with the public or the jury or anyone and that's one of the better solutions, to bring prisoners up inside an elevator and put them in the holding cell. When you need them in the courtroom, you pull them out and then put them back in the holding cell and there is a bailiff there.

Councilman Moffett stated he understands that Mr. Stewart's company is nationally recognized for its work with public safety buildings and given that, he wants to ask on a scale of one to ten with ten being the highest, what is the threat level regarding this building?

Mr. Stewart replied that it would be a ten. He believes there is a strong possibility of a threat there and as we move along in our history, courthouses have changed. The early ones that they are in the process of restoring right now, all the doors came up on both sides to the courtroom. The public had access. There was no concern about threat early on in our history but now, over a period of time, we can't project what's going to happen. We never know.

Councilman Moffett stated his next question, and he wants to frame this very carefully because with this information out there now, he would imagine we're going to have to be on a heightened sense of awareness because now the public as well as those people with bad intentions have more information available to them, but his question is if you could elaborate, and in very general terms, there were some things in the report that talk about the thickness of the metal around the judges' benches and there was also mention of the windows. He asked if Mr. Stewart could expound upon that?

Mr. Stewart stated in most of the public safety type facilities, we use a combination of glass and composite materials for bullet resistant glazing. That is something that needs to be done. There is a lot of glass exposure on the building. There is also a quarter inch

plate behind the judge's bench that will stop probably a small calibre bullet, but larger calibre bullets would penetrate that.

Mayor Ward commented that Mr. Moffett's concerns are founded and asked that we not go into too much detail.

Mayor Ward thanked Mr. Stewart for his report.

The City Manager stated also tonight included in the Bond Resolution are the school maintenance projects. We advance funded the school projects. Some of that was due to timing although we will potentially approve the bond resolution this evening. Assuming we do, we take anywhere from 30, 60, 90 days. We watch the interest markets to make sure that we get the best possible deal for the City. So the action we previously took enabled the school system to move forward with their projects and then we had a couple of other minor projects included in this bond issue. We also have a garage in this bond issue. She stated it is her opinion that we need to do more work on the design of that to ensure that the design of the garage meets the stated desires of Council, that it accommodate the potential for retail and/or office space that would be supportive of having the court complex and government complex in this vicinity. Between accomplishing the desire of getting the registrar here and making sure that we have that retail space, we still have more work to do on the garage, although she would highly recommend proceeding with the bond issue to take optimum advantage of interest rates which are very good these days and construction prices as well. We will come back with that design before we proceed so that you can be comfortable that we have achieved everything that you wanted, but we will proceed with the Circuit Court construction ahead of the garage as we think that is the most pressing need and that will give us the time we need to rework the design of the garage to accomplish all of Council's stated goals.

Councilman Tuck referenced a previous discussion about potentially either \$1.3 or \$1.4 million in this year's budget for debt service.

The City Manager stated they did plan for the fact that we would authorize the bonds in June and that there would be a first payment that would be required in this fiscal year and that was already accomplished in our budget.

In response to Councilman Tuck, Ms. Bunting stated that is for the fiscal year, not for the whole calendar year of 2012, which would start July 1st of 2011 and conclude June 30th of 2012.

Councilman Tuck stated then theoretically for a full fiscal year it would be higher than the \$1.3 million - \$1.4 million.

Ms. Bunting replied yes, but we pay off debt each year, too.

Mr. Karl Daugherty, Finance Director, clarified the City budgeted \$880,000 of debt service in fiscal year '12. We made the assumption that the debt would be issued in July. For fiscal year '13, a full year of debt service issues on about \$2.7 million.

Councilman Moffett directed a question to the City Attorney, asking if she could educate him on what we now know regarding the threat at the Courthouse, what is the City's maximum liability?

Ms. Hudson stated that is difficult to say. In terms of apportioning responsibility between the City and the Sheriff, Virginia Code makes the Sheriff responsible for the security of the courthouse. It makes the City responsible for the physical plant of a Courthouse. So we would have to examine the Code very closely. The Attorney General has interpreted the State Code and case law to determine the precise apportionment of liability as between the City and the office of the Sheriff for liability associated with security matters at the Courthouse. Ms. Hudson added that she would be glad to study the code and provide a more informed answer.

Councilman Moffett commented that he would discuss the issue more offline with the City Attorney because he is concerned about the liabilities involved. The more detail Ms. Hudson can provide would be most appreciated.

The Mayor reiterated a comment the City Attorney had made relative to the fact that the Virginia Code states it is the City's obligation to provide a safe and secure Courthouse facility.

Councilwoman Leary left the meeting during the above discussion.

PRESENTED information on the security of the Circuit Court.
This information was provided by James Stewart of Stewart-Cooper-Newell Architects. Karl Daughtrey, Finance Director, also provided information.

6. 11-0197 Briefing on the Status of Ft. Monroe

The City Manager stated that the Mayor may want to elaborate on her comments as she (the Mayor) has certainly been much more involved than she has, but we continue to work at the Federal level on a parallel path, both the Congressional authorization as well as the potential Antiquities Act Declaration by the President, for the establishment of a National Park Service presence. We're pursuing as large a footprint as we can possibly get from the National Park Service; a very expansive role to ensure that Ft. Monroe has the appropriate National stature consistent with the history that is presented there. There has been a lot of activity on that front. On behalf of the Fort Monroe Authority (FMA), the Mayor chairs a National Park Service working group. They have had multiple meetings to include a visit to Washington DC. Ms. Bunting stated we will continue to remain very optimistic although we're working with the Federal government and as you know, we cannot control the deadlines there.

Ms. Bunting stated they have had some very positive conversations with the National Park Service and believe that they share the vision that we have here locally for Fort Monroe. There are some additional activities that are going on beyond that in terms of the transactional activities for the Post. The FMA Deputy Director of Public Programs has been meeting with City staff, specifically the staff of Parks and Recreation, to discuss the coordination of special events not only for the specific transition ceremony, but also in terms of how we plan the use of public spaces at Fort Monroe and which public spaces they might ultimately deem as public parks available to all Hampton

residents, and which ones they may reserve for special events and revenue generation in terms of rentals and those kinds of things. So we're working through those details. In May we also had a meeting with Army Garrison representatives and our Hampton Public Safety team to specifically address the public safety operations during the transition - what Hampton police are prepared to do and when and what the Army will continue to do for how long and what will be the FMA's responsibility for private security. We've talked about this before, that a City is not responsible for individual building security for any individual establishment nor should we ever be, but we do the general proactive patrol and law enforcement, making sure we have a clear division of those responsibilities. So that is proceeding quite well with each of the parties putting to paper the specific roles we will each play. We've also been working on several economic development leads, different prospects, both of a private business nature as well as an institutional nature. She noted she is not at liberty to discuss those in any depth in a public forum, but she does want to assure Council, because you all have been unified in your vision not only to achieve the proper historic notations and National Park Service designations, but also jobs at Fort Monroe and staff is very actively working on the job front. As previously mentioned, the City's Economic Development Staff is working with the FMA staff. We've also been meeting with the Hampton Roads Economic Development Alliance (HREDA) to ensure that leads that come to the region are referred to Fort Monroe, as appropriate, as well as to the City. We make sure that the HREDA representatives who are out selling the region are fully aware of the assets and the attributes of Fort Monroe and they can promote Fort Monroe as a premier destination, so that is advancing.

Ms. Bunting stated in addition, the FMA staff and the Army and the Casemate have been meeting to ensure that the Casemate Museum will remain operational. We have been invited and included in those meetings, as well. We have several upcoming events. Assistant City Manager James Peterson sits on the Finance Committee that the City has staffed. There is also a Leasehold Feasibility Working Group and Mr. Peterson and Mr. Brian DeProfio, Special Projects Manager, are on that working group and as those meetings occur, updates will be provided.

Mayor Ward added we continue to work on both ideas, the legislative method and the Antiquities Act option in terms of trying to get a National Park unit established. We continue to lobby. Senators James Webb and John Warner now have sent a letter to the President specifically asking for an Antiquities Act designation in addition to their legislative letter last fall. Congressman Bobby Scott has also sent an additional letter to the President. We continue to work on legislative language and on our boundary map and the Economic Development Conveyance (EDC) negotiations with the Army continue. There have been some exciting prospects out at the Fort in the last few weeks, which is very encouraging. One thing everybody in Hampton needs to know is the beaches are open. As long as you have an ID and a proof of insurance for your automobile, any member of the public can access Fort Monroe and use the beaches and the City of Hampton is partnering with Fort Monroe to provide life guards there. She highly recommended that people start to take advantage of that access.

PRESENTED by Mary Bunting, City Manager, and Mayor Ward.

THERE WERE NO REGIONAL ISSUES DISCUSSED

NEW BUSINESS

The Mayor noted that Councilman Moffett and the City Manager had an exciting trip to Germany and stressed not on the tax payer's dollar.

Councilman Moffett commented the trip was at the invitation of the German Foundation. He noted the highlight of the visit was the US Ambassador to Germany came with his motorcade to greet them. Councilman Moffett stated he would be remiss if he did not thank all of the City staff, all of the volunteers and all of the leadership who, over the years, really pressed forward with this vision for civic engagement. It was because of their hard work that brought Hampton to this place where we were being considered for this international award.

Councilman Moffett gave a brief slide presentation stating that the Bertelsmann Stiftung Foundation annually sponsors, applies, and strives to help German society attack the challenges of today's democracies. The challenges outlined by the foundation in their work include social inequality and exclusion, new expectations for political participation, and insufficient problem solving capabilities. These are challenges for all democracies including the United States. In the next slide, as we speak to the focus of the Reinhard Mohn Prize 2011, this is a prestigious award sponsored, again, by the Bertelsmann Stiftung Foundation. In 2011 the prize was named after the founder, Reinhard Mohn. Each year the prize focuses on seeking innovations to enhance German society. The 2011 effort was geared specifically on finding democratic innovations that strengthened citizen participation in the political process. This was specifically important for the Germans as they have had some recent challenges. Well over 100 localities, regional governments, or States were nominated for the prize. This was especially important that out of these 100 localities, we were one of the nominees. Nominees were evaluated on the following criteria: impact, scale, capacity, inclusion, efficiency, innovation, and transferability. After an extensive review process, seven finalists were chosen. These finalists were Recife, Brazil; Horizonte, Brazil; La Pieta, Argentina; Geraldton, Australia; Vancouver, British Columbia Canada; Portsmouth, New Hampshire; and Hampton, Virginia. Field research teams with foundation representatives visited each of the finalists to intensively study the community and interview relevant parties. Short videos were produced on each finalist and a case study was also prepared. This information was shared with over 10,000 German citizens chosen to select the final winner. Recife, Brazil was chosen as the prize winner. Hampton rated fourth of the seven finalists and was the highest ranking US city. The next slide is on German culture.

Councilman Moffett noted that he and the City Manager learned a lot about the German culture from their hosts. We were afforded a personalized tour and introduction to the country. Among the most powerful and impactful things they learned were that Germans were reserved about appearing nationalistic. The World Cup a few years ago provided Germans an opportunity once again to be proud of the German flag. Germans also pride themselves on striving for perfection and find it somewhat difficult by their own standards and admissions at falling short of perfection. Germans also believe in lifelong learning and continuous education and they have a deep respect and desire for well-defined legal framework for all that they do. Indeed as we went through the symposium, these things were consistently echoed. He turned the presentation over to the City Manager, who by the way did an extraordinary job in presenting the Hampton way in Berlin.

Ms. Bunting commented that Councilman Moffett was very well received and in fact several of the people came up to us afterwards and spoke to Councilman Moffett about

his clear passion and love for citizen engagement and it was clear in his personal belief and humanity, and it was really important that we conveyed that. We only had ten to fifteen minutes for our presentation to show what we are really all about in Hampton. Ms. Bunting stated they believed when they went over to Germany that they would be speaking largely to the foundation partners, academics, and their guests. Indeed there were those types present, but we also were surprised to learn that the highest level of government officials in Germany were present. Councilman Moffett put together a book for Council that includes all the participants of the symposium and as you look through it you will see Cabinet members from the federal government, central government of Germany, as well as the various German states, Secretaries of State, Secretaries of the Foreign Ministry, Secretaries of the Interior were all present and we were even blessed with a visit from the President of the German Parliament as well as Mr. Moffett indicated, the American Ambassador to Germany. So this was a very high level symposium and we were very honored to be able to represent all of you there and to talk about what we've done and in particular, to have been highlighted as a community worth the German's further studying. The three localities that actually presented are on the next slide. As Councilman Moffett already mentioned, over 10,000 Germans actually viewed the videos and case studies and ranked the finalists. He said we came in fourth out of seven. The three localities that were highlighted and in their interventions at the symposium were chosen based upon the foundation's assessment as to its transferability and applicability to the Germans. So they chose Vancouver, Recife, the finalist, and us. She noted that is a great compliment that they specifically chose us to come and speak even though we weren't in the top three. We wanted to share with you what the other two communities shared because we thought there was a lot for us to take away from these other communities. So it wasn't just us imparting information. It was also us learning information. Vancouver was highlighted for its work with the citizen assembly. The citizen assembly was convened to intensively study and recommend alternatives to the existing electoral process which the premier of British Columbia, the equivalent of a State Governor in the Canadian system, felt needed review, but felt like it would be improperly done by politicians. He wanted to put that to the people and they had a very intensive way of selecting citizens to represent all of the districts of British Columbia. The citizens selected invested much time and study to understand the existing electoral process, what were other options, and then to recommend a process. Ms. Bunting noted that both she and Councilman Moffett were struck by how similar this process was in its design and effect to Hampton's own Charter Review Commission which was done many, many years ago. They had gone about selecting the participants in a slightly different way, but they basically used a similar approach and it had been relatively successful. Ultimately, the recommendation that was put forth by the citizens did not get adopted because of the high threshold the government had put on a referendum vote, but they felt like the process of engaging citizens made the entire State of British Columbia more aware of the electoral process and its pros and cons.

Ms. Bunting continued stating the winner of the prize Recife, Brazil was highlighted for its efforts to enable neighborhoods to help prioritize and make capital investments relating to their neighborhood districts. They worked to ensure that functional illiteracy was not a barrier to participation. That particular community has a high level of illiteracy and they really worked by hiring staff to go out and work with neighbors to help them understand the details of the budget and the decisions that were to be made so that every citizen could participate irrespective of their station in life. They actually allocated funds to each district to decide how to prioritize. After conducting the educational process, they had a voting system that they employed to determine the priorities for the

expenditure of those dollars. Again, the effort was similar to some of the efforts we've undertaken with the Neighborhood Commission. As you all know, we have the neighborhood small capacity grants and the larger \$100,000.00 grants that neighborhoods have been able to apply for in the past and have really been a part of neighborhood prioritization, but this was much more intensive and much more expansive. In fact, they actually committed the equivalent of millions of US dollars to various capital projects and letting the neighborhood districts prioritize what should come first, second, third, etc. We definitely believe there may be potential for us to build on the lessons of both of these communities in the right types of environments and for the right types of issues.

Ms. Bunting continued stating she and Councilman Moffett highlighted the many engagement efforts Hampton has undertaken over the years going all the way back to the Neighborhood Commission, the Neighborhood College, the Citizen's Unity Commission, involvement by our community in the strategic plan process and updates, the i-value citizen engagement efforts, etc. The Germans were most impressed with the long term sustainability of our various efforts as opposed to a one-shot deal. They felt like Hampton really represented the type of building of community and building of culture that was necessary to sustain efforts for a long term. She noted her belief that was the reason why Hampton was ultimately selected as one of the three case studies.

Ms. Bunting continued stating she wanted to briefing share some of the issues that the Germans were facing and how they thought our renovations and those of the other two communities might be applied. The Germans are currently struggling with civic engagement, and what it really means for them and some of the officials embraced civic engagement and others viewed it as giving up power to the people and losing power and we tried to really challenge them that that's not what it is. It's about building a community together, but their view had been shaped by some recent challenges that they had to include Stuttgart 21 which was a transportation project started over ten years ago. Just like transportation projects in America take a long time to complete, they take a long time to complete in Germany and they had done all the legally required public involvement. They really believe in a legal framework. Fast forward to time to do that project, and people were not as embracing of the project. In fact, they actually got to the point where they were tying themselves to trees to stop the project from moving forward and it was very, very traumatic for this culture that prides itself on perfection and legal tradition and they didn't know how to process that. They also worried that civic engagement meant putting everything to referendum and they cited California's propositions as a way of Californians basically bankrupting themselves by not allowing themselves to raise the money necessary to provide required governmental services. Their view was that this proposition approach to government had become very financially and socially destructive and they didn't want to end up there, and so that's why these innovations were very, very important to them. They wanted to find a way to avoid the showdowns that they thought that propositions ultimately represented in California and they thought that they were on that path if they didn't come up with something better. They noted, for instance, that the British Columbia approach might be an excellent tool for working with referendum and ballot questions so people understood what they were voting on and avoided some of the pitfalls of some of those California propositions. They felt that the lessons of Recife, Brazil might be applied best for capital investment decisions at the neighborhood and State levels and they noted that Hampton's approach, the systematic, integrated engagement effort, offered probably the most potential for avoiding showdowns like Stuttgart 21. She commented that she and

Councilman Moffett both felt they had a chance to potentially make an impact on the future conversations of German government.

Ms. Bunting concluded by stating it was a true honor to represent Council and the community and all the leaders that came before us. She indicated the last slide contained pictures that Councilman Moffett took of the people they met and visited with.

CLOSED MEETING

7. 11-0198 Closed session as provided in Virginia Code Section 2.2-3711.A.1

APPROVED - the motion was defeated.

Motion made by: Councilmember Will Moffett

Seconded by: Vice Mayor George E. Wallace

Ayes: 3 - Will Moffett, George E. Wallace, Molly Joseph Ward

Nays: 3 - Ross A. Kearney, II, Christopher G. Stuart, Donnie R. Tuck

Absent: 1 – Angela Lee Leary

MOVED TO consider the appointment agenda items in open session. The motion was defeated.

Motion made by: Councilmember Ross A. Kearney, II

Seconded by: Councilmember Christopher G. Stuart

Aye: 3 - Ross A. Kearney, II, Christopher G. Stuart, Donnie R. Tuck

Nay: 3 - Will Moffett, George E. Wallace, Molly Joseph Ward

Absent: 1 – Angela Lee Leary

MOVED TO consider the reappointments only in the evening session.

Motion made by: Vice Mayor George E. Wallace

Seconded by: Councilmember Ross A. Kearney, II

Aye: 5 - Ross A. Kearney, II, Will Moffett, Christopher G. Stuart, George E. Wallace, Molly Joseph Ward

Nay: 1 - Donnie R. Tuck

Absent: 1 – Angela Lee Leary

- . 11-0098 to consider appointments to the Hampton Arts Commission

NO ACTION REQUIRED

- . 11-0105 to consider appointments to the Virginia Air & Space Center Board of Directors

NO ACTION REQUIRED

- . 11-0168 to consider an appointment to the Hampton Redevelopment and Housing Authority

NO ACTION REQUIRED

- . 11-0170 to consider appointments to the Citizens' Unity Commission

NO ACTION REQUIRED

- . 11-0175 to consider appointments to the Hampton Senior Citizens Advisory Committee

NO ACTION REQUIRED

- . 11-0196 to consider an appointment to the Hampton Parking Authority.

NO ACTION REQUIRED

- . 11-0203 to consider appointments to the Peninsula Stadium Authority.

NO ACTION REQUIRED

Certification

- 8. 11-0199 Resolution Certifying Closed Session

WHEREAS, the City Council of the City of Hampton, Virginia, has convened a closed session on this date pursuant to an affirmative recorded vote made in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712D of the Code of Virginia requires a certification by the City Council of the City of Hampton, Virginia, that such closed meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton, Virginia, hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed session to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the city council of the city of Hampton, Virginia.

NO ACTION TAKEN

Molly Joseph Ward
Mayor

Katherine K. Glass, CMC
Clerk of Council

Date approved by Council _____